

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

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COMMISSION

In The Matter of: Joint Application of:

**E.ON AG, POWERGEN PLC, LG&E ENERGY )  
CORP., LOUISVILLE GAS & ELECTRIC )  
COMPANY, AND KENTUCKY UTILITIES COMPANY )  
FOR APPROVAL OF AN ACQUISITION )**

**Case No. 2001-104**

**POSTHEARING BRIEF OF THE ATTORNEY GENERAL**

The Commission should find that the acquisition as proposed by the Joint Applicants is not consistent with the public interests as required by KRS 278.020(5). The Joint Applicants' proposal for acquisition fails to contain any benefit for the ratepayers of Kentucky and the evidence reflects that the proposal is actually adverse to their interests. In addition, the Application seeks to deprive ratepayers of any opportunity to participate in quantifiable benefits expected to result from either this acquisition or future acquisitions of companies, the latter of which will be outside the jurisdiction of the PSC.

Furthermore, the Applicants' have failed to make a record that demonstrates that the Applicants have the technical and managerial skills to operate KU and LG&E as required by KRS 278.020(4). Their demonstration that it will simply be business as usual falls short of making that demonstration given substantial workforce reduction. Finally, the Joint Applicants have failed to provide a solid commitment that the delivery of safe, reliable, and adequate service will continue. Accordingly, the Commission should not approve the transaction as proposed.

**I**  
**THE APPLICATION IS NOT CONSISTENT WITH THE PUBLIC**  
**INTEREST ABSENT INCLUSION OF CONDITIONS TO FORCE**  
**SHARING OF FUTURE BENEFITS AND SYNERGIES**  
**WITH KENTUCKY CUSTOMERS.**

Ralph Pohlig unabashedly states that E.ON's goal is to become "the largest and most PROFITABLE utility company in the world."<sup>1</sup> In order to further this endeavor, E.ON will continue its growth by expanding into the "fragmented Midwest."<sup>2</sup> Economies of scope, scale and other potential synergies arising from such future acquisitions and mergers are identified by the Applicants as the most probable means by which there will be tangible benefits from this acquisition and merger that might be shared with Kentucky customers<sup>3</sup>.

The Joint Applicants refused to commit to sharing any savings that result from future acquisitions or mergers. Incredulously, the Applicants maintain that they will *only commit to discussing* sharing any savings<sup>4</sup>. Given Mr. Staffieri's testimony concerning why the Companies had failed to establish an advisory board after agreeing to the Commission's suggestion that they do so as a condition of the LG&E-PowerGen merger<sup>5</sup>, one must conclude that the Applicants will only do that which is demanded and directly mandated in unequivocal terms by the Commission. In this instance, that means that the Applicants' hedging must be seen as a position that the companies will not share any savings arising from future acquisitions and mergers. Accordingly, unless the Commission now avails itself of the opportunity to force the Applicants to commit to sharing future savings, and not merely discussing such a sharing, and dictates the

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<sup>1</sup> Pre-filed direct testimony, p. 9, emphasis added.  
<sup>2</sup> See, Joint Applicant" Response to AG 1-4.  
<sup>3</sup> See, Application, pp. 14-15 .  
<sup>4</sup> See, for example, TE Vol. I, PP. 36-40.  
<sup>5</sup> TE, Vol. II, p. 18.

means and mechanism by which that sharing is to be accomplished, the Commission cannot be sure the Applicants will share such savings with Kentucky customers.

The Applicants have stated that synergies arising from future acquisitions and mergers constitute the most probable source of benefits and savings that might be shared with Kentucky ratepayers<sup>6</sup>. Absent such savings, there is no direct benefit for Kentucky customers. The future acquisitions or mergers will be outside the jurisdiction of the Kentucky Public Service Commission. Without *guarantees* or conditions included as a condition to the approval of the current application, any possible future savings may well be lost. In light of potential savings that may accrue from future acquisitions, whether through economies of scale or otherwise, the Applicants must be required to share those future savings with Kentucky customers through a most favored nations clause as a condition to approval of this acquisition. Under such a clause, Kentucky customers would be guaranteed receipt of benefits the same as or equivalent to benefits<sup>7</sup> that the customers of other utilities acquired by E.ON or its subsidiaries receive as a result of the acquisition or merger process.

## II THE APPLICANTS ASSURANCES OF PROVIDING SAFE, RELIABLE, AND ADEQUATE SERVICES ARE QUESTIONABLE.

As a result of case 2000-095, Joint Application of PowerGen PLC, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of a Merger, the then applicants committed that customers would experience no change in utility

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<sup>6</sup> See, for example, Joint Applicants' Application, Dr. Hans Michael Gaul at pp. 11-12.

<sup>7</sup> Given the differences between utilities, it may not be possible to give the same benefits to the customers of two different utilities. In that instance, equivalent benefits of equal value to the Kentucky customers should be assured.

service due to the establishment of LG&E Energy Services, Inc.<sup>8</sup> Further commitments were made by the Companies that service reliability and quality would not be adversely affected, whether by workforce reductions or otherwise.

However, Victor Staffieri testified that LG&E and KU have experienced workforce reductions of about 20%<sup>9</sup>. The Applicants' position that service has not been adversely affected is erroneous. During the hearing, Mr. Jack Burch testified that as the Executive Director for the Community Action Counsel, he has personally experienced adverse effects on his clients, who are KU customers, in working with KU subsequent to the PowerGen acquisition. The workforce reductions have had an adverse effect on the Applicants' customers<sup>10</sup>. As E.ON has only agreed to those commitments previously made in 2000-095, and as those commitments have been broken, some conditions must be placed on the Joint Applicants in order to ensure good service for the utility customers.

In addition, as a tangential point, the Applicants, through multiple and even last minute supplemental answers to discovery requests, maintain that virtually no savings have resulted from the workforce reductions<sup>11</sup>. Incredulously, the company stated on the eve of the hearing that only .6 million dollars will be saved from the workforce reductions during each of the next few years. This position creates a paradox to which the commission should give great scrutiny. Either savings have occurred given the magnitude of the workforce reductions and the Applicants are trying to hide same in an attempt to avoid sharing the savings OR the Applicants pursued the workforce reductions which has compromised service for a negligible benefit.

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<sup>8</sup> See Commission Order at p.6.

<sup>9</sup> See, TE, Vol. I, p. 236.

<sup>10</sup> See, TE, Vol. II, pp. 245-247.

<sup>11</sup> See, Applicant's Supplemental Response to PSC 3-27, dated June 29, 2001.

Indeed, the Applicants decision to engage in a significant workforce reduction that has provided almost a nonexistent benefit, yet has jeopardized the service provided to the consumers, should beg the Commission to force the Applicants to demonstrate safe, reliable, and adequate service through some sort of Commission review mechanism.

**III  
E.ON HAS FAILED TO DEMONSTRATE THAT IT HAS  
SUFFICIENT TECHNICAL AND MANAGERIAL SKILLS  
TO OPERATE POWERGEN, OR MORE SPECIFICALLY  
KU AND LG&E**

The record is devoid of any evidence that E.ON has the technical and managerial skills to operate KU and LG&E. As an Applicant, E.ON has the affirmative duty of creating a record upon which the Commission can base its decision. Aside from some unsolicited and currently irrelevant assurances that E.ON has the knowledge to operate electric companies in the "privatized", or deregulated market, E.ON has provided no evidence that it can operate LG&E or KU. Indeed, when the Attorney General asked E.ON to provide *specific* evidence, the Applicants provided only vague answers during the hearing<sup>12</sup>. Hence, E.ON either does not have the technical and managerial skills or it is indifferent to providing the requested evidence. The latter answer should certainly not apply if E.ON is both a reputable company and understands that this commission can halt the transaction.

Any assurances by E.ON that it will rely on PowerGen, KU or LG&E to properly perform the managerial responsibilities, and thus meet the statutory criteria, should be dismissed outright. Specifically, the workforce reductions are clear indicators that management decisions have created significant problems for the Applicants' customers and give rise to a question of

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<sup>12</sup> See, for example, Dr. Erhard Schipporeit at TE, Vol. I, pp. 26-28.

whether sufficient knowledgeable personnel remain in management and skilled positions to render reliable reasonable service.

Victor Staffieri testified that the LG&E and KU workforces have been reduced by about 20%<sup>13</sup>. One could argue, based on discovery filed by the Applicants, that the reductions are significantly higher<sup>14</sup>. However, even the most minimal estimates presents a paradox. Either the Commission must be concerned that the Companies were so overstaffed at all technical and managerial levels that they can be found capable of providing reasonable service despite the significant workforce reduction, or it must be concerned that as a result of workforce reductions a sufficient showing has not been made by KU and LG&E to give it a basis upon which to find that E.ON, through its reliance on the managerial and technical abilities already in place at KU & LG&E, has the technical and managerial abilities to provide reasonable service.

### CONCLUSION

The proposed transaction does not provide adequate safeguards or benefits for the ratepayers. As proposed it is not consistent with the public interest under KRS 278.020(5). This commission should require the Applicants to share any savings resulting from E.ON's acquisition of LG&E Energy. Since savings and benefits exist primarily in conjunction with future acquisitions and mergers, the Commission's approval should be conditioned upon E.ON's commitment to abide by a most favored nations clause which would entitle the customers to share in any future savings. In the alternative to the most favored nations clause and at a

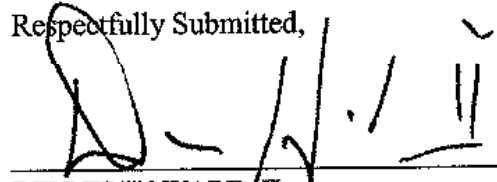
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<sup>13</sup> See, TE, Vol. II, p. 236.

<sup>14</sup> According to information provided by the Applicants to PSC 2-25(f)(1) and (2), page 1 of 1, the total head count reductions for both LG&E and KU can be calculated as 1,142. Based on this same exhibit, the total workforce was 3,493 prior to the reductions. According to the Response to PSC 3-29, the number of new hires or back fills as of June 14, 2001, was 15. Hence, with the ultimate reduction of 1,142 jobs and only 15 were replaced, one can determine that approximately 33% of the workforce will be reduced.

minimum, the PSC should require that the Joint Applicants file an application with the PSC to share any potential savings of future acquisitions or mergers each time such acquisitions and mergers are approved and agree to allow the commission to dictate the amount and means by which the savings and benefits will be shared with Kentucky customers. Further, E.ON should be required to demonstrate with a detailed record that it does in fact have the managerial and technical skills to operate KU and LG&E. Finally, the Commission should require that these Applicants maintain the level and standard of service previously provided by LG&E and KU prior to the workforce reductions, and should provide for reviews, and if necessary, sanctions to ensure the level of service does not further deteriorate.

Respectfully Submitted,



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## NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby give notice that I have filed the original and twelve true copies of the foregoing **POSTHEARING BRIEF OF THE ATTORNEY GENERAL** with the Kentucky Public Service Commission at 211 Sower Blvd., Frankfort, Ky., 40601 and further certify that this the 20th day of July, 2001, I have served the parties by mailing true copies of same, postage prepaid to:

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